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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/390,855	10/31/2001	Neil Porter	08364-0022	8015
22852	7390	06/03/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			BEISNER, WILLIAM H	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/890,855

Applicant(s)

PORTER ET AL

Examiner

William H. Beisner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 42-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 42-48 and 66-70 is/are allowed.
- 6) ☒ Claim(s) 49-65 and 71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other, \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claims 61-65 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claims 61-65 are improper dependent claims because claim 61 which depends from claim 49 does not include all the limitations of the claim from which it depends. That is, claim 49 recites a device that requires at least a first vessel with solid growth supporting medium and a second vessel with solid growth supporting medium while claim 61 only requires a single vessel. A reference that anticipates claim 61 would not necessarily also anticipate claim 49.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 49, 50, 53-55, 58, 59, 61, 63 and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry (US 2,048,966).

With respect to claims 49 and 71, the reference of Perry discloses a microorganism culture apparatus that includes a first vessel defining a cavity extending between first and second

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ends of the vessel and the cavity contains a solid growth supporting medium for viably supporting a microorganism. The reference includes a second vessel of the same configuration as the first vessel (See Figure 1). The ends of the two vessels are arranged such that medium at one end of the first vessel and another end of the second vessel provide a continuum for growing microorganisms.

With respect to claim 50, the vessels are generally elongate.

With respect to claim 53, the vessels are substantially filled with solid growth medium (See column 2, lines 46-55).

With respect to claims 54 and 55, the reference discloses the use of a reticular insert (10) between the vessels.

With respect to claim 58, the outer ends (4) of the vessels are capable of being closed by removable cap means (6).

With respect to claim 59, the same solid growth medium is used in each vessel.

With respect to claim 61, the reference of Perry discloses a hollow tubular member (2) with first (4) and second (7) open ends. The walls of the first end (4) are capable of receiving a removably attachable cap and the walls of the second end (7) are capable of cooperating with an open end of a further vessel of substantially the same geometry (See Figure 1).

With respect to claims 63 and 64, the reference discloses that the device is constructed of a plurality of cap members (6) and a plurality of vessels (2).

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 51, 52, 56, 57 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry (US 2,048,966).

The reference of Perry has been discussed above.

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With respect to claims 51 and 52, while the preferred embodiment of Perry employs only two vessels, the reference discloses that additional vessels can be coupled together (See page 2, column 1, lines 34-43).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide a device that includes addition cavity defining vessels as is suggested by the reference of Perry.

With respect to claims 56 and 57, in the absence of a showing of criticality and/or unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the optimum manner in which to provide the partition (10) suggested by the reference of Perry based merely on design considerations such as the size of the vessel and/or properties of the solid growth medium.

With respect to claim 65, if not readily apparent to one of ordinary skill in the art, it would have been within the skill in the art to provide the device with instruction for use in terms of preparation of the solid medium, assembly instructions, sterilization instructions, etc.

8. Claims 51, 52, 56, 57 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry (US 2,048,966) in view of Anton Crespo (ES 2023600).

The reference of Perry has been discussed above.

Claims 60 and 62 differ by reciting that the vessel walls have a gas permeable membrane.

The reference of Perry discloses the use of gas-permeable openings (16) on the device.

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The reference of Anton Crespo disclose a vessel device that is similar in structure to that of the primary reference wherein gas-permeable areas are provided on the vessel walls using membrane covered openings (See the English language abstract and drawings).

In view of these teachings, it would have been obvious to one of ordinary skill in the art to provide the vessels of the primary reference with the gas-permeable openings suggested by the reference of Crespo for the known and expected result of providing an alternative means recognized in the art to achieve the same result, provide gas-exchange with the interior of the vessel.

#### ***Allowable Subject Matter***

9. Claims 42-48 and 66-70 are allowed.
10. The following is a statement of reasons for the indication of allowable subject matter.

While the reference of Perry discloses a device that is capable of performing the claimed method of claim 42, the reference fails to teach or fairly suggest inoculating the growth medium in the first vessel at a first location and causing the microorganism to grow to a second location in the first vessel wherein the microorganism grows from the body of medium in the first vessel into the body of the medium of the second vessel at the second location.

#### ***Response to Arguments***

11. Applicant's arguments, cancellation and the filing of new claims 42-71, see pages 10-17, filed 04 March 2004, with respect to the rejection(s) of claim(s) 1-41 under 35 USC 102 and 103

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have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the reference of Perry (US 2,048,966).

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

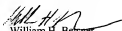
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William H. Belsmer  
Primary Examiner  
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WHB